

REMARKS/ARGUMENTS

Claims 1-33 were original and 1-3, 9, 11, 14-17, 22-23, and 31-33 now remain in this application. Claims 3 and 32 are currently amended. Claims 4-8, 10, 12-13, 18-21, and 24-30 have been withdrawn.

I. 35 USC 102(a) Claims 1-3, 9, 11, 14-17, 22-23, and 31-33

The Office Action rejected claims 1-3, 9, 11, 14-17, 22-23, and 31-33 under 35 USC 102(a) as being anticipated by Rivaud (U.S. Patent No. 4,590,775).

Claim 1: Independent claim 1 recites a pad. As a cushionlike mass of soft material, the recited pad may be compressed and uncompressed. (Application, page 8, paragraph 0035).

The examiner asserts that Rivaud's convex discoidal end 5 teaches the claimed pad. However, Rivaud teaches that the convex discoidal end 5 is made of rigid material (Rivaud, col. 2, line 48). Rivaud fails to teach a pad as recited in claim 1.

Claim 2: Dependent claim 2 recites a post as the means for coupling the pad to the support.

The examiner asserts that Rivaud screw 3 is used to couple the convex discoidal end 5 to the neck 2. However, the convex discoidal end 5 is one element that makes up the Rivaud screw 3. Since Rivaud does not teach the convex discoidal end 5 as being an element separate and apart from the Rivaud screw 3, Rivaud does not teach a post as the means for coupling the pad to the support as recited in claim 2.

Claim 3: Rivaud does not teach dependent claim 3 as currently amended.

Claim 9: Claim 9 recites nonpiercing jewelry of claim 1, further comprising: means for stabilizing the pad to the support.

The examiner asserts that Rivaud ear-lap 6 teaches the recited means for stabilizing the pad to the support. However, Rivaud ear-lap 6 is not part of the Rivaud earring. Rivaud does not teach means for stabilizing the pad to the support.

Claim 11: Is allowable by reasons of its dependency on independent claim 1.

Claim 14: Is allowable by reasons of its dependency on independent claim 1.

Claim 15: recites where the pad is marked by the ability to return towards an original position, as after having been compressed.

The examiner asserts that Rivaud's convex discoidal end 5 teaches the claimed pad and that Figs. 4 to Fig. 1 teaches the convex discoidal end 5 ability to return towards an original position, as after having been compressed. However, Rivaud teaches that the convex discoidal end 5 is made of rigid material (Rivaud, col. 2, line 48). In addition, Figs. 4 to Fig. 1 do not teach the convex discoidal end 5 ability to return towards an original position, as after having been compressed. Rivaud does not teach where the pad is marked by the ability to return towards an original position, as after having been compressed as recited in the claim.

Claim 16: recites where the pad is resilient.

The examiner asserts that Figure 4 of Rivaud shows that the convex discoidal end 5 is resilient. However, per MPEP 2125, proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. The examiner's reliance on Figure 4 to teach the recited claim is misplaced. Rivaud does not teach where the pad is resilient.

Claim 17: recites where the pad includes material from a group of materials consisting of silicone, rubber, foam, cork, sponge, polyurethane, polystyrene, polyolefin, fluoropolymer, vinyl, naturally occurring substance, and gel that is configured to be contained in a gel pack.

Rivaud col. 2, lines 3-6 states "The earring of this invention is constituted by a rod, wire, or filament of any appropriate material, for instance metal in the embodiment of FIGS. from 1 to 4." The examiner asserts that this statement teaches the above limitation in claim 17.

However, the examiner failed to provide technical reasoning based on factual statements to support the assertion that the claimed materials necessarily flows from Rivaud's teachings. In fact, Rivaud further states that the screw 3 having the convex discoidal end 5 is attached to the neck 2

by the screw (column 2, lines 8-10) and that the earring embodiment of Figs. 1 to 4 is made of a rigid material. When the Rivaud statement "The earring of this invention is constituted by a rod, wire, or filament of any appropriate material, for instance metal in the embodiment of FIGS. from 1 to 4" is view along with these additional teachings, they all suggest the convex discoidal end 5 of Rivaud is hard and rigid, not flexible, resilient or soft as the material recited in claim 17. Rivaud does not teach claim 17.

Claim 22: Independent claim 22 recites means for coupling the pad to the support.

The examiner identifies Rivaud 1,2 as teaching the recited support (support 1,2) and Rivaud opening 8 as teaching this limitation. However, Rivaud does not teach a pad nor does Rivaud teach the opening 8 as a means for coupling a pad to (support 1,2). Here, the examiner failed to provide technical reasoning based on factual statements to support the assertion that the identified characteristic necessarily flows from Rivaud's teachings.

Claim 23 (post): Dependent claim 23 recites the jewelry structure of claim 22 where the means for coupling the pad to the support includes at least one of a post attached to the support .

The examiner cites Rivaud screw 3 as teaching a post attached to the support (1,2). However, when Rivaud screw 3 having the convex discoidal end 5 is attached to Rivaud support (1,2), the combination now has the purported pad (5) attached to it and thus the combination could not be "a jewelry structure adapted to be assembled with a pad to form a nonpiercing jewelry" as recited in the claim. Thus, Rivaud does not teach the claimed limitation.

Claim 23 (adhesive): Dependent claim 23 recites the jewelry structure of claim 22 where the means for coupling the pad to the support includes at least one of ... adhesive adapted to be positioned between the pad and the support.

Rivaud does not teach adhesive, Rivaud does not teach a pad, and Rivaud does not teach adhesive adapted to be positioned between the pad and the support. Thus, Rivaud does not teach the claimed limitation.

Claim 31: Independent claim 31 recites a pad.

The examiner asserts that Rivaud's convex discoidal end 5 teaches the claimed pad. However, Rivaud teaches that the convex discoidal end 5 is made of rigid material (Rivaud, col. 2, line 48). Rivaud fails to teach a pad as recited in claim 1.

Claim 31: Independent claim 31 recites a pad adapted to be coupled to the post.

The examiner asserts that Rivaud's convex discoidal end 5 teaches the claimed pad and screw 3 as the post. However, Rivaud does not teach that the convex discoidal end 5 is adapted to be attached to the screw 3. Rather, Rivaud teaches that the convex discoidal end 5 is part of the screw 3. (Rivaud col. 2, lines 9-10)

Claim 32: Rivaud does not teach dependent claim 32 as currently amended.

Claim 33: recites The nonpiercing jewelry of claim 32 where the support includes a support surface positioned adjacent to the slot.

Rivaud fails to teach the claimed slot. Thus, Rivaud does not teach the claimed limitations.

II. Conclusion

For the above reasons, Applicant respectfully requests that the examiner withdraw the rejections to the claims. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Dated: OCTOBER 14, 2005

Respectfully submitted,

LAW OFFICES OF VINCENT TASSINARI

By: 

Vincent Tassinari

Registration No. 42,179

Direct Phone No.: (818) 585-0331

Law Offices of Vincent Tassinari
125 Grand Ave. Suite 201
Long Beach, CA 90803
Telephone: (818) 585-0331